(3)

Supreme Court, U.S.
FILED

05-385 AUG 5 - 2005

OFFICE OF THE CLERK

No._____

_____

IN THE

SUPREME COURT OF THE UNITED STATES

Benny Cohen,

Petitioner(s)

vs.

Allstate Insurance Company,

Respondent(s)

_____

On Petition For A Writ of Certiorari to

The State of New York Court of Appeals

_____

PETITION FOR WRIT CERTIORARI

_____

Benny Cohen
1270 East 18 Street Apt 6H
Brooklyn New York 11230
(718) 258 - 1744

QUESTION(S) PRESENTED

Brief: Plaintiff and defendant agreed in conference hearing that this case will be as a contract case.

1. Does a tort arise from the breach of a legal duty independent to the contract.?

Brief: The Insurance Company put the blame in Their Third Party Summons, on the defendants Doctor Joseph L. Paul and Country-Wide Independent Medical Exam.

2. Does Insurance Company's are obligated by law to investigate before denying a claim.?

Brief: The Supreme Court of the State of New York Appellate Division: Second Judicial Department. Stated: " even if negligent, that there was a causal nexus between any such negligence and the plaintiff's claimed injuries." Therefore, Respectfully, the Supreme Court of the State of New York Appellate Division: Second Judicial Department, and New York Court of Appeals Should not have dismissed plaintiff case.

3. Does causal nexus between such negligence and the plaintiff's claimed injuries occur.?

Brief: Hon. Judge Lewis L. Douglass of the Supreme Court County of Kings, two times denied defendant motion to dismiss.

4. Does the plaintiff injuries can fairly be traced and challenged to the action of the defendant. ?

Brief: The constitutional requisites under Article III for the existence of standing are that the party seeking to sue must personally have suffered some actual or threatened injury that can fairly be traced to the challenged action of defendant and that the injury is likely to be redressed by a favorable decision.

5. Under what federal basis does plaintiff warrant before review of case.?

Brief: The "legal rights" language has now been dispensed with. Rejection occurred in two administrative law cases in which the Court announced that parties had standing when they suffered "injury in fact" to some interest, "economic or otherwise," that is arguably within the zone of interest to be protected or regulated by the statute or constitutional provision in question.

6. Did the plaintiff is given standing, to assert his claims, which directly results in the violation of his legal right. ?

LIST OF PARTIES

[ ] All parties appear in the caption of the case on the cover page.

[x] All parties **do not** appear in the caption of the case On the cover page. A list of all parties to the proceeding in the Court whose judgment is the subject of this petition is as follows:

1) Doctor Joseph L. Paul, et al.,

2) Country-Wide Independent Medical Exam P.C. et al.,

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(2). AETNA HEALTH INC. V. DAVILA (02-1845) 307 F.3d 298, reversed and remanded.

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STATUTES AND RULES

(1). Order modified, without costs,

(2). The judgment of the Court of Appeals is reversed, and the cases are remanded for further proceedings consistent with this opinion. It is so ordered.

IN THE

SUPREME COURT OF THE UNITED STATES

PETITION FOR WRIT OF CERTIORARI

Petitioner respectfully prays that a writ of certiorari issue to review the judgment below.

OPINIONS BELOW

[ ] cases from **federal courts:**

The opinion of the United State Court of Appeals appears at Appendix_____ to the petition and is

[ ] reported at_____ :or,

[ ] has been designated for publication but is not yet reported: or,

[ ] is unpublished.

The opinion of the United State Court of Appeals appears at Appendix_ to the petition and is

[ ] reported at_____ :or,

[ ] has been designated for publication but is not yet reported: or,

[ ] is unpublished.

The opinion of the highest state court to review the merits

At Appendix__"B" App. 2 ____to the petition and is

[ ] reported at_____ :or,

[ ] has been designated for publication but is not yet reported: or,
[x] is unpublished.

The opinion of the Appellate Division: Second Judicial Department Appears at Appendix____"C" App. 3 Through App. 4___to the petition and is

[ ] reported at_____:or,

[ ] has been designated for publication but is not yet reported: or,
[x] is unpublished.

The opinion of the Appellate Division: Second Judicial Department

Appears at Appendix___"D" App. 5 _____to the petition and is

[ ] reported at_____:or,

[ ] has been designated for publication but is not yet reported: or,
[x] is unpublished.

The opinion of the Supreme Court of the State of New York County of Kings

Appears at Appendix___"E" App. 6 Through App. 7
__to the petition and is
[ ] reported at_____:or,

[ ] has been designated for publication but is not yet reported: or,
[x] is unpublished.

The opinion of the Supreme Court of the State of New York County of Kings

Appears at Appendix___"F" App. 9 Through App. 10
__to the petition and is

[ ] reported at_____:or,

[ ] has been designated for publication but is not yet reported: or,
[x] is unpublished.

JURISDICTION

[x] For cases from State Courts;

The date on which the highest state court decided my case was **March 31, 2005**

A copy of the decision appears at appendix **"B" App. 2**

[x] A timely petition for rehearing was thereafter denied on the following date; **June 7, 2005** and a copy of the order denying rehearing appears at appendix **"A" App. 1**

[x] An extension of time to file the petition for a writ of certiorari was granted to and including....**60 Days** (date) on...**August 10, 2005**_____ (date) to **October 8, 2005**__in application No._ _Mail_

The jurisdiction of this Court is invoked under 28 U. S . C . § 1257(a)

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

The Constitution of the United State of America Article III. Judicial Department

* [[Page 658]] Constitutional Standards: Injury in Fact, Causation, and Redressability. -While the Court has been inconsistent over time, it has now settled upon the rule that, ``at an irreducible minimum, '' the constitutional requisites under Article III for the existence of standing are that the party seeking to sue must personally have suffered some actual or threatened injury that can fairly be traced to the challenged action of defendant and that the injury is likely to be redressed by a favorable decision. \340\ \340\ Valley Forge Christian College v. Americans United, 454 U.S. 464, 472 (1982); Allen v. Wright, 468 U.S. 737, 751 (1984); Lujan v. Defenders of Wildlife, 112 S. Ct. 2130, 2136 (1992). See, however, United States Parole Comm. v. Geraghty, 445 U.S. 388 (1980), a class action case, in which the majority opinion appears to reduce the significance of the personal stake requirement. Id., 404 n.11, reserving full consideration of the dissent's argument at id., 401 n. 1, 420-421. ----------For

some time, injury alone was not sufficient; rather, the injury had to be ``a wrong which directly results in the violation of a legal right, "\341\ that is, ``one of property, one arising out of contract, one protected against tortious invasion, or one founded in a statute which confers a privilege. "\342\ The problem was that the ``legal right" language was ``demonstrably circular: if the plaintiff is given standing to assert his claims, his interest is legally protected; if he is denied standing, his interest is not legally protected. "\343\ The observable tendency of the Court, however, was to find standing frequently in cases distinctly not grounded in property rights.. \344\ \341\ Alabama Power Co. v. Ickes, 302 U.S. 464, 479 (1938). Cf. Joint Anti-Fascist Refugee Committee v. McGrath, 341 U.S. 123, 151-152 (1951) (Justice Frankfurter concurring). But see Frost v. Corporation Comm., 278 U.S. 515 (1929); City of Chicago v. Atchison, T. & S. F Ry., 357 U.S. 77 (1958). \342\ Tennessee Power Co. v. TVA, 306 U.S. 118, 137-138 (1939). \343\ C. Wright, op. cit., n. 326, 65-66.\344\ E.g., Joint Anti-Fascist Refugee Committee v. McGrath, 341 U.S. 123 (1951) (indirect injury to organization and members by

governmental maintenance of list of subversive organizations); NAACP v. Alabama ex rel Patterson, 357 U.S. 449 (1958) (same); Abington School District v Schempp, 374 U.S. 203,224 n. 9 (1963) (parents and school children challenging school prayers); McGowan v. Maryland, 366 U.S. 420, 430-431 (1961) (merchants challenging Sunday closing laws); Baker v. Carr 369 U.S.186, 204-208 (1962) (voting rights).———— —— In any event, the ``legal rights" language has now been dispensed with. Rejection occurred in two administrative law cases in which the Court announced that parties had standing when they suffered ``injury in fact" to some interest, ``economic or otherwise," that is arguably within the zone of interest to be protected or regulated by the statute or constitutional provision in question. \345\ Now,"

STATEMENT OF THE CASE

1) On April 12. 2000 Plaintiff was hit by a car in the rear while he was standing for the light to change. Plaintiff suffered injuries to the neck and the back, and was recommended for surgery on the neck.
2) The Insurance Company sent the plaintiff to their doctor, and their Doctor stated that nothing is wrong with the plaintiff. At That time the Insurance Company have two Reports one from the Doctor who recommended surgery, and the second, from their Doctor who stated that noting is wrong with the plaintiff.
3) The Insurance Company adapted their Doctor recommendation, ignoring Doctor report who recommended surgery. Only on day of surgery (September 14. 2000) Cabrini Medical Center informed the plaintiff that the Insurance Company refused to pay for the surgery and plaintiff was denied no-fault benefits.

4) It was the Insurance Company responsibility to investigate before denying plaintiff benefits, when two reports stating much differences. Instead the defendant chose to accept Their doctor's recommendation, ignoring the Doctor's report who recommended surgery, and ignoring plaintiff's suffering and condition.

5) After being sued by the plaintiff, the defendant filed a Third Party Summons against Doctor Joseph L. Paul and Country-Wide Independent Medical Exams P.C. In that law suit, the defendant put all the blame on Doctor Joseph L. Paul and Country-Wide Independent Medical Exams P.C. which the defendant hired in first place to perform this medical exam.

6) The defendant in their Third Party Summons Stated.

> " Upon information and belief, at all time hereinafter Mentioned. The defendant COUNTRY-WIDE was negligent in their selection of the examining physician in that DR. PAUL's examination was cursory and not comprehensive."

7) The above statement by the defendant is very Crucial, because it reveals to this Court the truth About the defendant. On one hand the defendant acknowledges wrong doing to the plaintiff, and in the other hand the defendant tells to the Court that this examination was independent And have nothing to do with the defendant.

8) A letter from Country-Wide Independent Medical Exams P.C. stated specifically.

> " We have requested by the Insurance Company named above to schedule an appointment for Medical examination. The examination will take place as Follows:"

9) By doing so the defendant Intent are clear. By trying to convince the Court that they have nothing to do with Doctor Joseph L. Paul finding. But by filing Third-Party Summons against Country Wide Independent Medical Exams P.C. and Doctor Joseph L. Paul defendant's admitted wrong doing by Third Party. Only to the fact that the defendant's was the one's who hired Third Party for this medical examination, therefore the defendant should be held responsible.

10) Supreme Court Judge Hon. Lewis L. Douglas two times denied defendant motion to dismiss. Stating (September 15, 2003)

> " Defendant Allstate further claims that Complaint should be dismissed because Plaintiff executed assignments to his Health care providers. However, plaintiff assignment was for services which he Claims he never received due to the Negligence of Allstate.
> Therefore, the motion to dismiss for defendant Allstate is denied in full"

11) In the following case the Court recognize the different between supplied defective floor tiles, and the nature of the injury, the manner in which the injury occurred and the resulting harm. In their decision the Court's campers plaintiff Injuries to **floor tiles**. Therefore, Respectfully, the Appellate Division: Second Judicial Department and the State of New York Court of Appeals should not dismiss plaintiff case.

12) 79 N.Y.2d 540, 593 N.E.2d 1365, 583 N.Y.S.2d 957 (1992). May 12, 1992

This Court has identified several guideposts for separating tort from contract claims. In North Shore Bottling Co v C. Schmidt and Sons, Inc. (22 NY2d 171, 179), we recognized that "a contracting party may be charged with a separate tort liability arising from, or in addition to, the breach of contract." A tort may arise from the breach of a legal duty independent of the contract (Clark-Fitzpatrick, Inc. v Long Island RR Co., 70 NY2d 382, 389; Rich, 87 NY at 398, supra), but merely alleging that the breach of a contract duty arose from a lack of due care will not transform a simple breach of contract into a tort (Clark-Fitzpatrick, Inc. v Long Island RR Co., supra). AA legal duty independent of contractual obligations may be imposed by law as an incident to the parties' relationship. Professionals, common carriers and bailees, for example, may be subject to tort liability for failure to exercise reasonable care, irrespective of their contractual duties (Rich, 87 NY at 399; Prosser, Borderland, at pp 402-405) In these instances, it is policy, not the

parties' contract, that gives rise to a duty of due care (see, Prosser, The Law of Torts, supra, p 613). A In disentangling tort and contract claims, we have also considered the nature of the injury, the manner in which the injury occurred and the resulting harm (see, , 293-295). In Bellevue, we rejected plaintiff's attempt to ground in tort a claim that defendants supplied defective floor tiles, noting that the injury (delamination

of tiles) was not personal injury or property damage; there was no abrupt cataclysmic occurrence; and the harm was simply replacement cost of the product. Thus, where plaintiff is essentially seeking enforcement of the bargain, the action should proceed under a contract theory (id: Clark-Fitzpatrick , 70 NY2d at 389-390, supra).

13) AETNA HEALTH INC. V. DAVILA (02-1845) 307 F3d 298, REVERSED AND REMAND

14) In Referring to the above case plaintiff did establish well-pleaded complaint against the defendant Allstate Insurance Company. And, or, this case does arise under federal law and have original jurisdiction by bringing federal question that arise under the Constitution, laws. And supported by Article III. The defendant acted in a bad faith ignoring Doctor recommendation for surgery.

And the importance to the public must be tremendous consideration of this issue.
Doctor Jacob Nir, M.D., F.A.A.P.M. & R. Diplomate American Board of Physical Medical & Rehabilitation. Stated: (September 26, 2004) **App. 43** A There is deterioration of the patient's condition because surgery has not been performed on the cervical spine.

Doctor Raj Murali, Professor and Chairman, Saint Vincents Hospital New York NY. Department of Neurosurgery. In report from (November 1, 2000) **App. 47, 48** A Once the insurance issues are sorted out, I shall arrange for anterior cervical decompression and fusion at C 4-5 and 5-6 levels. Plaintiff went to see Doctor Raj Murali under GHI insurance and Doctor Raj Murali didn't want to perform this Operation under GHI stating A Because it was car accident GHI will not pay or pay very little.

Doctor Richard J. Radna, M.D. : Neurosurgery. Stated: (April 14, 2004) **App. 53** Impression is that of a causally-related cervical and lumbo - sacral, musculo – skeletal and radicular pain syndromes. The level of causally - related disability is total. In light of the chronicity of the patient's symptoms, they have permanency .

This Doctor's statement and finding show That plaintiff condition deteriorated only because plaintiff did not receive the surgery, do to the fact that the defendant did not investigate, and choose their Doctor report to determined plaintiff no fault benefits.

15) AETNA HEALTH INC. V. DAVILA (02-1845) 307 F3d 298, REVERSED AND REMANDS

"Under the removal statute, A any civil action brought in the State court of which the district courts of the United States have original jurisdiction, may be removed by the defendant's to federal court. 28 U.S.C. ' 1441(a). One category of cases of which district courts have original jurisdiction are federal question cases: cases Aarising under the Constitution, laws, or treaties of the United States. '1??1. We face in these cases the issue whether Respondents' causes of action arise under federal law. Ordinarily, determining when a particular case arises under federal law turns on the well-pleaded complaint rule. Franchise Tax Bd. of Cal. v. Construction Laborers Vacation Trust for Southern Cal., 463 U.S. 1, 9C10 (1983). The Court has explained that A whether a case is one arising under the Constitution or a law or treaty of the United States, in the sense of the jurisdictional statute[,]

must be determined from what necessarily appears in the plaintiff's statement of his own claim in the bill or declaration, unaided by anything alleged in anticipation of avoidance of defenses which it is thought the defendant may interpose. Taylor v. Anderson, 234 U.S. 74, 75-76(1914. In particular, the existence of a federal defense normally does not create statutory Aarising under jurisdiction, Louisville & Nashville R. Co. v. Mottley, 211 U.S. 149 (1908), and Aa defendant may not [generally] remove a case to federal court unless the plaintiff's complaint establishes that the case arises under federal law. Franchise Tax Bd., supra, at 10. There is an exception, however, to the well-pleaded complaint rule. [W]hen a federal statute wholly displaces the state law cause of action through complete pre-emption, the state claim can be removed. Beneficial Nat. Bank v. Anderson, 539 U.S.1,8 (2003). This is so because [w]hen the federal statute completely pre-empts the state-law cause of action, a claim which comes within the scope of that cause of action, even if pleaded in terms of state law, is in reality based on federal law. I bid ERISA is one of these statutes.

REASONS FOR GRANTING THE PETITION

1. The plaintiff was insured by the defendant, therefore. The defendant responsibility under the Insurance law is to make sure and investigate before denying a claim.

2. By not holding defendant responsible, the defendant will continue to abuse more clients all over the United States.

3. Today plaintiff is totally disabled and under heavy medication. Life has become miserable due to the fact that Plaintiff is in unstoppable pain and condition has deteriorated to the point of not sleeping and finally when asleep, waking up soon after with tremendous pain.

4. The government and the courts are the only ones who can ensure that those Insurance Companies will be regulated and fair to the consumer.

5. The constitutional requisites under Article III for the existence of standing are that the party seeking to sue must personally have suffered some actual or threatened injury that can fairly be traced to the challenged action of defendant and that the injury is likely to be redressed by a favorable decision.

6. The defendant in their own admission in the Third-Party Summons, Admitted wrong doing to the

plaintiff.
Defendant is obligated by law to make sure and investigate before denying a claim, which the defendant did not do. Plaintiff's condition deteriorated to an irreversible point, and medications became to be part of life.

7. The plaintiff believes that his legal right Is protected duo to the fact that the plaintiff did give standing to assert his claims.

8. The defendant tried to settle this case with the plaintiff and this is one more indication of wrong doing and admission.

9. Supreme Court of the State of New York County of Kings Hon. Judge Lewis L. Douglass, two times denied defendant motion to dismiss, regard CPLR 3211 (a) (7).

10. The plaintiff Injury=s can fairly be traced and challenged to the **action** of the defendant.

11. Plaintiff should be given the right to proceed with the case, go to trail and let a jury decide the finale outcome.

12. The defendant hired Country-Wide Medical exam P.C. who chose a Doctor for plaintiff's examination. Therefore the defendant must be held responsible for any one who they hired. **For example,** if plaintiff was to give his car to a friend to drive and the friend

makes an accident, plaintiff can't claim that because he was not in the car it is not his responsibility. A lawsuit will be filed against the plaintiff and the plaintiff's insurance company. Similarly, in this case, Allstate Insurance Company is denying responsibility because they didn't perform the exam, but County Wide Medical exam P.C. and their Doctor Paul. However, Allstate Insurance Company denied plaintiff's medical benefits based on Doctor Paul's report. Allstate Insurance Company had to take into account Doctor Brisson medical report which they received/ This report recommended surgery. Allstate Insurance Company had to weigh these reports before denying medical benefits to the plaintiff.
Therefore Allstate Insurance Company must be held responsible.

CONCLUSION

The petition for a writ should be granted.

Respectfully submitted,

Benny Cohen /s/ Benny Cohen

Date; December 14, 2005

APPENDIX A

State of New York
Court of Appeals

At a session of the Court, held at Court of Appeals Hall in the city of Albany on the.....seventh.....day of.....June.....2005

Present, HON, JUDITH S. KAYE, Chief Judge, presiding

213 Mo. No. 415
Benny Cohen,

Appellant,

V.

Joseph L. Paul, et al.,

Defendants,

Allstate Insurance Company,

Respondent,

A motion for reargument of motion for leave to the Court of Appeals in the above cause having been heretofore made upon the part of the appellant herein and papers having been submitted thereon and due deliberation having been thereupon had, it is ORDERED, that the said motion be and the same hereby is denied with one hundred dollars costs and necessary reproduction disbursements.

/s/ Stuart M. Cohen
Clerk of the Court

App. 2

APPENDIX B

State of New York
Court of Appeals

At a session of the Court, held at Court of Appeals Hall in the city of Albany on the.....thirty-first.....day of.....March.....2005

Present, HON, JUDITH S. KAYE, Chief Judge, presiding

213 Mo. No. 75
Benny Cohen,

Appellant,

V.

Joseph L. Paul, et al.,

Defendants,

Allstate Insurance Company,

Respondent,

A motion for leave to appeal to the Court of Appeals in the above cause having heretofore been made upon the part of the appellant herein and papers having been submitted thereon and due deliberation having been thereupon had, it is ORDERED, that the said motion be and the same hereby is denied with one hundred dollars costs and necessary reproduction disbursements.

/s/ Stuart M. Cohen
Clerk of the Court

App. 3
APPENDIX C

Supreme Court of the States of New York
Appellate Division: Second Judicial Department

D4298
R/cf

Argued - September 14, 2004

___AD3d

A. GAIL PRUDENTI, P J.
GABRIEL M. KRAUSMAN
THOMAS A. ADAMS
ROBERT A. SPOLZINO, JJ.

2003 - 09656

DECISION & ORDER

Benny Cohen, respondent, v Joseph L. Paul, et al., Defendants, Allstate Insurance Company, appellant. (Index No. 34448/02

Bruno, Gerbino & Soriano, LLP, Melville, N.Y. (Charles W. Benton of counsel), for appellant.
Benny Cohen, Brooklyn, N.Y., respondent pro se.

In an action to recover damages for negligence, the defendant Allstate Insurance Company appeals from so mach of an order of the Supreme Court, Kings Count (Douglass, J) Dated September 15, 2003, as denied its motion, inter alia, pursuant to CPLR 3211(a) (7) to dismiss the complaint insofar as asserted against it.

ORDERED that the order is reversed insofar as appealed from, on the law, with costs, the motion is granted, and the complaint is dismissed insofar as asserted against the appellant.

The Supreme Court erred in not dismissing the

complaint against the defendant Allstate Insurance Company (Hereinafter Allstate). Neither the pleadings nor the plaintiff's responding submissions in opposition to Allstate's motion included factually-reasonable allegations that Allstate was negligent and, even if negligent, that there was a causal nexus between any such negligence and the plaintiff's claimed injuries (see CPLR 3211(a) (7): see also CPLR 3013: Clarke-Fitzpatrick, Inc. v Long Is. R.R. Co., 70NY2d 382; Dimauro v Metropolitan Suburban Bus Auth., 105 AD2d 236, 239).

PRUDENTI, P. J., KRAUSMAN, ADAMS and SPOLZINO, JJ., concur.

ENTER

/s/ James Edward Pelzer
JAMES EDWARD PELZER
Clerk of the Court

October 12, 2004

COHEN v PAUL

APPENDIX D

Supreme Court of the States of New York
Appellate Division: Second Judicial Department
M19288 O/sl
Argued - September 14, 2004

A. GAIL PRUDENTI, P J.
GABRIEL M. KRAUSMAN
THOMAS A. ADAMS
ROBERT A. SPOLZINO, JJ.

2003 - 09656

DECISION & ORDER

Benny Cohen, respondent, v Joseph L. Paul, et al., Defendants, Allstate Insurance Company, appellant. (Index No. 34448/02)

Motion by the respondent for leave to reargue an appeal from an order of the Supreme Court, Kings County, dated September 15, 2003, which was determined by decision and order of this Court dated October 12, 2004. Upon the papers filed in support of the motion and the papers filed in opposition thereto, it is ORDERED that the motion is denied, with $100 costs.

PRUDENTI, P. J., KRAUSMAN, ADAMS and SPOLZINO, JJ., concur.

ENTER; /s/ James Edward Pelzer
Clerk of the Court

COHEN v. PAUL December 13, 2004

App. 6

APPENDIX E

SUPREME COURT OF THE STATE OF NEW YORK COUNTY OF KINGS

.....X

BENNY COHEN, Index No.;34448/02

Plaintiff,

-against- September 15, 2003

DOCTOR JOSEPH L. PAUL., & COUNTRY - WIDE INDEPENDENT MEDICAL EXAMS, P.C. & ALLSTATE INSURANCE COMPANY,

Defendant(s)

Hon. Lewis L. Douglass

.....X

The defendants move to dismiss pursuant to CPLR 3211. The plaintiff alleges that he was injured in an automobile Accident while insured by defendant Allstate. He claims that his doctor recommended and scheduled surgery for him. That Allstate requested that he see defendant Dr. Joseph L. Paul for medical examination. That based on the examination of Dr. Paul, Allstate refused coverage Stating that Dr. Paul 's examination found no injury, Plaintiff claims that defendants were negligent in making their assessment to deny him coverage to pay for his surgery. In giving plaintiff every possible inference, it is clear that he states a cause of action against Allstate, He claims that since his doctor scheduled surgery for his back, Allstate was negligent in relying on the

second medical examination to deny coverage. Accordingly, the motion to dismiss by defendant Allstate is denied. Defendant Allstate further claims that complaint should be dismissed because plaintiff executed assignments to his health care providers. However, plaintiff assignment was for services which he claims he never received due to the negligence of Allstate. Therefore, the motion to dismiss for defendant Allstate is denied in full. However, as to defendants Dr. Paul and Country-Wide, plaintiff has failed to allege any wrongdoing and accordingly, the motion to dismiss those defendants is granted.

This constitutes the decision and Order of the Court.

/s/ Lewis L. Douglass
Hon. Lewis L. Douglass

App. 8
APPENDIX F

SUPREME COURT OF THE STATE OF NEW YORK COUNTY OF KINGS

.....X

BENNY COHEN, Index No.;34448/02
Plaintiff,

-against- Hon. Lewis L. Douglass

November 10, 2004

DOCTOR JOSEPH L. PAUL., & COUNTRY - WIDE INDEPENDENT MEDICAL EXAMS, P.C. & ALLSTATE INSURANCE COMPANY,
Defendant(s)

.....X

SUPREME COURT OF THE STATE OF NEW YORK COUNTY OF KINGS

.....X

ALLSTATE INSURANCE COMPANY,

Third Party Plaintiff,

-against-

COUNTRY – WIDE INDEPENDENT MEDICAL EXAMS, P.C. & JOSEPH L. PAUL, M.D.

Third Party Defendants.

.....X

Defendant Allstate moves for summary judgment dismissing the case pursuant to CPLR 3211(a)(7), failure to state a cause of action. Defendant claims that plaintiff fails to alleged any facts as to how Allstate caused plaintiff's alleged injury. The dispute centers on the denial of plaintiff no fault claim by Allstate. Plaintiff claims Allstate was careless and negligent in denying his claim based on the report of it's doctor since plaintiff's doctor stated that plaintiff needed surgery Allstate argues that it did nothing wrong, that plaintiff failed to properly pursue his claim instead he started this action. In support of its claim that plaintiff dose not make out a case, defendant outlines the actions taken by both parties to support it's position. However, plaintiff either disputes those facts or give his explanation of the fact, For example, Allstate states it did not receive plaintiff's doctor's recommendation for surgery until after it's determination stating that it was mailed to the address on the insurance ID card issued to him by Allstate. Defendant claims that plaintiff claim was only partially denied. Plaintiff counters that when his neuro-surgeon inquired about coverage, he was told that claim was denied. These are just some of the incidences where there exist question of facts which should resolved by a jury. Accordingly, defendant motion to dismiss is denied. This constitutes the decision and order of the Court.

/s/ Lewis L. Douglass
Hon. Lewis L. Douglass

App. 10
APPENDIX G

SUPREME COURT OF THE STATE OF NEW YORK
COYNTY OF KINGS

.....X

BENNY COHEN,
Plaintiff,

Index No; 34448/02
PLAINTIFF'S EXHIBIT # 2
/s/ JP 2.17/04

-against-

NOTICE OF THIRD-PARTY SUMMONS

ALLSTATE INSURANCE COMPANY,

Index No; 76097/03

Defendant and Third-Party Plaintiff
-against-

COUNTRY-WIDE INDEPENENT MEDICAL EXAMS, P.C & DOCTOR JOSHPH L. PAUL, M.D.,

Third-Party Defendant,

.....X

TO THE ABOVE NAMED THIRD-PARTY DEFENDANT:

YOU ARE HEREBY SUMMONED TO answer the complaint of third-party
Plaintiff, ALLSTATE INSURANCE COMPANY, and of the plaintiff, BENNY COHEN a copy of which is hereby served upon you, and to serve a copy of your answer upon the undersigned AND the plaintiff, BENNY COHEN, Pro-Se, which address is 1270 East 18th Street,

Apartment 6H, Brooklyn, New York 11230, within 20 days after the service of this third-party summons and complaint, exclusive of the day of service.

In the case of your failure to answer the complaint of third-party plaintiff, ALLSTATE INSURANCE COMPANY, judgment will be taken against you by default for the relief demanded in the third-party complaint.

Dated; Melville, New York
October 16, 2003 Yours, etc., BRUNO, GERBINO & SORIANO, LLP

/s/ By Wincent F. Gerbino
WINCENT F. GERBINO, ESQ
Attorneys for Defendant AND Third-Party Plaintiff, ALLSTATE
445 Broad Hollow Road, Suite 220
Melville, New York 11747
(631) 390-0010
File No; 6-3334

SUPREME COURT OF THE STATE OF NEW YORK COYNTY OF KINGS

.....X

BENNY COHEN,

Plaintiff, **Index No; 34448/02**

-against-

THIRD-PARTY SUMMONS

ALLSTATE INSURANCE COMPANY, Index No; 76097/03

Defendant and Third-Party Plaintiff

-against-

COUNTRY-WIDE INDEPENENT MEDICAL EXAMS, P.C
& DOCTOR JOSHPH L. PAUL, M.D.,

Third-Party Defendant,

.....X

To the above named third-party defendant
You are hereby summoned and required to serve upon the third-party Plaintiff's attorney an answer to the annexed complaint of the
third-party plaintiff, which is herewith served upon you together with all prior pleadings in the action, within twenty days after the service thereof, exclusive of the day of service, or within thirty days after service is

complete if service is made by any method other then personal delivery to you within the State of New York. In case of your failure to answer, judgment will be taken against you by default for the relief demanded in the third party complaint.

Dated; Melville, New York

October 15, 2003 Yours, etc., BRUNO, GERBINO & SORIANO, LLP

/s/ By Wincent F. Gerbino
WINCENT F. GERBINO, ESQ
Attorneys for Defendant AND Third-Part Plaintiff, ALLSTATE
445 Broad Hollow Road, Suite 220
Melville, New York 11747
(631) 390-0010
Our File # 6-3334

Addition to the amount of such judgment of the value thereof against Third-Party Plaintiff, the reasonable expenses incurred by Third-Party Plaintiff in defending this action, including counsel fees, costs and disbursements incidental thereto.

WHEREFORE, in the event that judgment is recovered by Plaintiff against Defendant-Third-Party Plaintiff, Third-Party Plaintiff demands judgment over against Third-Party Defendant in the like amount, together with the reasonable expenses incurred by Third-Party Plaintiff in defending this action, including counsel fees, costs and disbursements incidental thereto, and for such other relief that this court may see fit and proper to impose.

Dated; Melville, New York
October 15, 2003

BRUNO, GERBINO & SORIANO, LLP

/s/ By _____
WINCENT F. GERBINO
Attorneys for Defendant -Third-Party Plaintiff, ALLSTATE
445 Broad Hollow Road, Suite 220 Melville, New York 11747 (631) 390-0010
BG & S File; 6-3334

TO; BENNY COHEN Plaintiff Pro-Se
1270 East 18th Street, Apt, 6H
Brooklyn, NY 11230 (718) 258-1744

MOSSBERG & GLOTZER Attorneys for Third Party Defendant Joseph L. Paul, MD and Country-Wide Independent Medical Exams, P.C
295 Madison Avenue New York, NY 10017
(212) 889-8881

Plaintiff Pro Se
1270 East 18th Street Apt. 6H
Brooklyn, NY 11230
(718) 258-1744

MOSSBERG & GLOTZER
Attorneys for Third Party Defendants
Joseph L. Paul, MD and Country-Wide Independent
Medical Exams, P.C.
295 Madison Avenue
New York, New York 10017
(212) 889-8881

SUPREME COURT OF THE STATE OF NEW YORK
COYNTY OF KINGS

.....X

BENNY COHEN,
Plaintiff, Index No; 34448/02

-against-

THIRD-PARTY COMPLAINT

ALLSTATE INSURANCE COMPANY, Index No; 76097/03

Defendant and Third-Party Plaintiff
-against-

COUNTRY-WIDE INDEPENENT MEDICAL EXAMS, P.C
& DOCTOR JOSHPH L. PAUL, M.D.,

Third-Party Defendant,

.....X

Allstate Insurance Company, Third Party Plaintiff, through its attorney, Bruno, Gerbino & Soriano, LLP, as and for a Third-Party Complaint, allege;

1. That upon information and belief, at all times hereinafter mentioned, the Third-Party Defendant, COUNTRY-WIDE INDEPANDANT MEDICAL EXAMS, P.C., **(COUNTRY-WIDE)** ,was and is a corporation, doing business in the State of New York, with the principle place of business at 55 Maple Avenue, Rockville Centre, NY.

2. That upon information and belief, at all times hereinafter mentioned, the business of **COUNTRY-WIDE** is that of scheduling Independent Medical Examinations for insurance companies.
3. Upon information and belief, at all times hereinafter mentioned, the purpose of the Independent Medical Examinations is to evaluate the physical condition of a claimant at a certain point in time.
4. That the Independent Medical Examination is with a health care professional of a certified as an orthopedist.
5. That Third-Party Defendant receives its requests for such Independent Medical Examinations from, among other entities, automobile insurance companies.
6. That the Independent Medical Examinations from automobile insurance companies is often to determine the need for continued treatment of a claimant who was injured in an automobile accident.
7. That plaintiff BENNY COHEN was involved in an automobile accident on or about April 12, 2000
8. That plaintiff BENNY COHEN filed for No-fault benefits with Defendant, Third-Party Plaintiff, ALLSTATE INSURANCE COMPANY **(ALLSTATE)**.
9. That on or about May 1, 2002, Brian Colagero, a claim examiner for **ALLSTATE** contacted **COUNTRY-WIDE** and requested that an Independent Medical Examinations be set up for plaintiff **BENNY COHEN**.

10. That the type of examinations requested was chiropractic and orthopedic.

11. That **ALLSTATE** relied entirely upon **COUNTRY-WIDE** to select the health care professionals who would administer the requested Independent Medical Examinations.
12. That **ALLSTATE** did not choose, and did not have any input as to which doctors would administer the requested Independent Medical Examinations.
13. That ALLSTATE supplied certain documentation to **COUNTRY-WIDE** to assist the doctor administering the examination.
14. That **COUNTRY-WIDE** did not request additional documentation other then that supplied by **ALLSTATE**.
15. That on or about May 20, 2000, at the request of **COUNTRY-WIDE**, Plaintiff, BENNY COHEN was examined by Joseph Y. Margulies, M.D., Orthopedic Surgeon.
16. That Dr. Margulies issued a written report wherein he suggested that **BENNY COHEN** "... should be followed up by his orthopedic surgeon. He should be reevaluated in six weeks."
17. That on or about June 26,2000, **COUNTRY-WIDE** advised **ALLSTATE** that the six weeks as indicated in Dr. Margulies' report was at hand, and asked of **ALLSTATE** "Please let us know if and when you would like to have claimant re-examined."
18. That on or about June 28, 2000, **COUNTRY-WIDE** scheduled another examination of plaintiff BENNY COHEN, this examination was scheduled

for July 17, 2000, with Third-Party Defendant Joseph L. Paul, MD (**Dr. PAUL**).

19. That **ALLSTATE** did not have any input as to the selection of **Dr. PAUL** for this examination.

20. That **COUNTRY-WIDE** did not inquire of **ALLSTATE** if there were additional medical record or diagnostic test available for review by the doctor performing the Independent Medical Examinations.
21. Upon information and belief, at all times hereinafter mentioned, the Third-Party Defendant **Dr. PAUL** examined plaintiff **BENNY COHEN** on or about July 17, 2000.
22. That there was no communication or other contact between **ALLSTATE** and **Dr. PAUL** about how this examination should be conducted, or the ultimate findings of **Dr. PAUL.**
23. That **Dr. PAUL** issued a narrative report, dated July 17, 2000, and therein he offered a diagnosis, A comment on Mr. Cohen's disability, and treatment recommendations.
24. That **Dr. PAUL** offered diagnosis of ' Resolved sprain of the cervical spin. Normal examination of the upper extremities.'
25. That **Dr. PAUL,** with regard to BENNY COHEN'S disability, stated; 'The claimant has no disability at this time. There will be no permanency as a result of this accident. He is capable of working performing all of his normal activities of daily living without any limitations. '

26. That **Dr. PAUL**, with regard to BENNY COHEN'S treatment, stated; 'No future orthopedic intervention is indicated, and any such treatment would be considered excessive. There is no need for additional physical therapy, diagnostic testing, medical supplies, household help or special transportation.'

AS AND FOR A FIRST CAUSE OF ACTION AGAINTS THIRD-PARTY DEFENDANT COUNTRY-WIDE INDEPENDENT MEDICAL EXAMS, P.C.

27. Upon information and belief, at all times hereinafter mentioned, the defendant **COUNTRY-WIDE** was negligent in their selection of the examining physician in that **Dr. PAUL's** examination was cursory and not comprehensive.
28. That the above mentioned narrative report was sent to **COUNTRY-WIDE** and not to **ALLSTATE**.
29. That **COUNTRY-WIDE** forwarded the report of **Dr. PAUL** to **ALLSTATE.**
30. That the aforementioned report was incomplete as Dr. PAUL conducted an alleged cursory examination and failed to review all of the claimant's medical record and diagnostic test results.
31. That **COUNTRY-WIDE** knew, or should have known that **Dr. PAUL's** file was not complete, or current, as they failed to request additional record since the examination of Dr. Margulies.
32. That **ALLSTATE**, relying upon the submission by COUNTRY-WIDE, issued a Denial of Benefits form to BENNY COHEN, and thereafter denied any claims for continued orthopedic care

for made by BENNY COHEN, or by physicians on his behalf.

33. That by reason of the foregoing, the Third-Party Defendant **COUNTRY-WIDE** is required to indemnify Third-Party Plaintiff in the event and in the amount, in whole or in part, of any judgment that may be rendered herein in favor of Plaintiff, against Third-Party Plaintiff and the Third-Party Defendant, **COUNTRY-WIDE** should be required to pay, in addition to the amount of such judgment or the value thereof of any verdict herein or the value thereof against Third-Party Plaintiff, the reasonable expenses incurred by Third-Party Plaintiff in defending this action, including counsel fees, costs and disbursements incidental thereto.

AS AND FOR A SECOND CAUSE OF ACTION AGAINTS THIRD-PARTY DEFENDANT JOSEPH PAUL, MD.

34. Third-Party Plaintiff **ALLSTATE** repeats and Reiterates all of the allegations contained in the aforementioned paragraphs 1 though 28 with the same force and effect as if they were more fully set forth herein.

35. That **Dr. PAUL** is a physician, licensed to practice in the State of New York.

36. That **Dr. PAUL**, on or about July 17, 2000, Maintained his office at 2623 Coney Island Avenue, Brooklyn, NY.

37. That **Dr. PAUL** received an assignment from **COUNTRY-WIDE** to perform an Independent

Medical Examination on BENNY COHEN.

38. That **Dr. PAUL** failed to inquire of **ALLSTATE** as to whether there were additional medical record or diagnostic test results since the examination of plaintiff by Dr. Margulies.

39. That the aforementioned Independent Medical Examination took place at **Dr. PAUL's** Coney Island Avenue office on or about July 17, 2000.

40. Upon information and belief, at all times hereinafter mentioned, the Third-Party Defendant **Dr. PAUL** Examined plaintiff **BENNY COHEN** on or about July 17, 2000.

41. Upon information and belief, at all times hereinafter mentioned, the defendant **Dr. PAUL** did not conduct a comprehensive physical examination.

42. That **Dr. PAUL** did not inquire of **COUNTRY-WIDE** if there were any additional treatment records, or diagnostic tests that those provided by Third-Party Defendant **COUNTRY-WIDE** with the assignment of The Independent Medical Examination.

43 That there was no communication or other contact between **ALLSTATE** and **Dr. PAUL** about how this Examination should be conducted, or the ultimate Finding of **Dr. PAUL.**

44. That **Dr. PAUL** issued a narrative report, dated July 17, 2000, and therein he offered a diagnosis, a comment on Mr. Cohen's disability, and treatment recommendations.

45. That **Dr. PAUL** offered a diagnosis of ' Resolved sprain of the cervical spine. Normal examination of the upper extremities.'

46 That **Dr. PAUL,** with regard to BENNY COHEN'S

disability, stated; 'The claimant has no disability at this time. There will be no permanency as a result of this accident, He is capable of working and performing all of his normal activities of daily living without any limitations.'

47. That **Dr. PAUL,** with regard to BENNY COHEN'S treatment, stated; No future orthopedic intervention is indicated, and any such treatment would be considered excessive. There is no need for additional physical therapy, diagnostic testing, medical supplies, household help or special transportation.'

48. That the above mentioned narrative report was sent To **COUNTRY-WIDE** and not to **ALLSTATE.**

49. That **ALLSTATE,** relying upon the report and opinion of **Dr. PAUL,** issued a Denial of Benefits form to BENNY COHEN, and thereafter denied any claims for continued orthopedic care made by BENNY COHEN, or by physicians on his behalf.

50. That by reason of the foregoing, the Third-Party Defendant **Dr. PAUL,** is required to indemnify Third-Party Plaintiff in the event and in the amount, In whole or in part, of any judgment that may be Rendered herein in favor of Plaintiff, against Third-Party Plaintiff and the Third-Party Defendant, **Dr. PAUL** should be required to pay, in addition to the Amount of such judgment or the value thereof of Any verdict herein or the value thereof against Third-Party Plaintiff, the reasonable expense incurred By Third-Party Plaintiff in defending this action, Including counsel fees, costs and disbursements Incidental thereto.

WHEREFORE, in the event that judgment is recovered by plaintiff, against Defendant-Third-Party Plaintiff,

Third-Party Plaintiff demands judgment over against Third-Party Defendants in the like amount, together with the reasonable expenses incurred by Third-Party Plaintiff in defending this action, including counsel fees, costs and disbursements incidental thereto, and for such relief that this court may see fit and proper to impose.

Dated; Melville, New York
October 15, 2003

BRUNO, GERBINO &
SORIANO, LLP

/s/ By _____
WINCENT F. GERBINO
Attorneys for Defendant-Third-Party
Plaintiff, ALLSTATE
445 Broad Hollow Road, Suite 220 Melville, New York
11747 (631) 390-0010
BG & S File # 6-3334

TO; BENNY COHEN
Plaintiff Pro-Se
1270 East 18th Street, Apt, 6H
Brooklyn, NY 11230
(718) 258-1744

MOSSBERG & GLOTZER
Attorneys for Third-Party Defendant
Joseph L. Paul, MD and Country-Wide
Independent Medical Exams, P.C.
295 Madison Avenue
New York, NY 10017
(212) 889-8881

SUPREME COURT OF THE STATE OF NEW YORK
COYNTY OF KINGS

.....X

BENNY COHEN,
Plaintiff,

-against-

ALLSTATE INSURANCE COMPANY

Defendant and Third-Party Plaintiff

THIRD-PARTY SUMMONS AND COMPLAINT
-WITH NOTICE-

BRUNO, GERBIN & SORIANO, LLP
Attorney(s) for Defendant/ Third-Party Plaintiff Allstate
Office and Post Office Address
445 broad Hollow Road, Suite 220
MELVILLE, NEW YORK 11747
(631) 390-0010
6-3334
FILE_____

Pursuant to 22 NYCRR 130-1.1, the undersigned, an attorney admitted to practice in the courts of New York State. Certifies that, upon information and belief and reasonable inquiry the contentions contained in the annexed document are not frivolous.

Dated: 10, 17 , 03 /s/ Signature.....
Vincent F. Gerbino

APPENDIX H

TODAY'S CAL. # 31 RJI DATE 3 ,26 03 INTEK PART

PRELIMINARY CONFERENCE ORDER PURSUANT TO PART 202 OF THE UNIFORM CIVIL RULER FOR THE SUPREME COURT KINGS COUNTY

HON. DOOGLASS **DATE 10/ 03 200__**

BENNY COHEN
Plaintiff(s)
-against-
ALLSTATE INC CO.
Defendant(s)

Index # 34448/02

Compliance Conference shall be held in IAS Part CCP on 1-5 2004 at 9;30 am

FAILURE OF COUNSEL TO ATTEND THE COMPLIANCE CONFERENCE MAY RESULT IN THE IMPOSITION OF SANCTIONS

Attorney Firm Benny Cohen by Pro Se. FOR Plaintiff
Attorney Firm Bruno Gerbino by Diane kadlec For Def

THE DISCOVERY END DATE IS 2, 26, 2004 .
THE NOTE OF ISSUE DUE DATE IS 3, 26, 2004 .

IT IS HEREBY ORDERED THAT THIS ACTION IS ASSIGNED TO THE __ EXPEDITED __X__ STANARD _____ COMPLEX TRACK

AND DISCLOSURE SHALL PROCEED AS FOLLOWS:

I. WRITH PLAINTIFF'S MOST SEVERE INJURY;____

II. TYPE OF CASE __ MOTOR VEHICLE
__ PREMISES LIABITY

__ PROFESSIONAL MALPRACTICE (MED MAL ETC.)
__ OTHER BRIEFLY DESCRIBE:
X_____CONTRACT
__ LABOR LAW

III. CPLR 325(D) Eligible upon further order
$10 Million

IV. INSURANCE COVERAGE (INCLUDING EXCESS AND/OR UMBRELLA COVERAG)
DEFENDANT_____DEFENDANT_____
[X] IF NOT FURNISHED, PLAINTIFF TO BE ADVISED IN WRITING BY 11, 2, 2003

PRELIMINARY CONFERENCE ORDER

App. 29
APPENDIX I

COUNTRY-WIDE INDEPENDENT MEDICAL EXAMS P.C. 55 Maple Avenue – Suite 204
Rockville Centre, N.Y. 11570
Telephone (516) 764- 2500 Fax (516) 764- 3227

Benny Cohen

Date; 28-Jun-2000

1270 E. 18TH ST.
Brooklyn, NY 11230

Insured; Benny Cohen
Claimant; Cohen. Benny
Claim #; 4815478815
Case Type; No Fault
Exam Type; Orthopedic
Accident Date; 4/12/2000
Insurance Co; ALLSTATE INSURANCE COMPANY

We have been requested by the Insurance Company named above to schedule an appointment for a medical examination. The examination will take place as follows;

Doctor; Joseph Paul **Date;** Monday. July 17, 2000
App. 29

Place; 1390 Coney Island Ave. **Time;** 6;45 pm
Brooklyn. NY
(718)332-0490

Failure to appear for this examination could be considered a violation of your policy. The Insurance Company could deny your benefits. The N. Y. S. No-

Fault law states; The claimant will be reimbursed for loss of earnings and reasonable transportation expenses

incurred in complying with this request. Please submit proof of claim for consideration.
If you have any questions regarding this scheduling, please call Lynn Carter at (516) 764-2500. Monday through Friday, 9; 00 A.M. to 5;00 P.M.
Please bring any current X- rays and any current medical record with you, if they are available.

Yours truly.

/s/ Country-Wide Independent Exams

_____

_____

_____

APPENDIX J

Joseph L. Paul, M.D.
Diplomate of American Board Orthopedic Surgery

2623 Coney Island Avenue Brooklyn, New York 11223 Telephone; (718) 332- 0490 Fax (718) 332-5697
July 17, 2000
Country-Wide Exams 55 Maple Avenue- Suite 204
Rockville Centre. NY 11570

Claimant; Benny Cohen
Claim #; 4815478815
Date of Accident April 12, 2000

To Whom is May Concern;

At your the above named claimant was seen today in my Brooklyn office for an independent orthopedic examination. He presented with a valid photo identification. My findings are as follows;

HISTORY OF ACCIDENT;
According to the claimant, he was involved in a motor vehicle collision on April 12, 2000. At the time of the accident, he was a seat belted driver when his car was hit on the rear end. He denies suffering any loss of consciousness. Lacerations. Or fractures. That day. He

was taken by ambulance to Brooklyn Community Hospital, where he had x-rays performed.
The claimant was released from the hospital that day. One to two days following this incident, he presented to Dr. Jacob Nil, an orthopedist, with complaints of neck pain with radiating pain down the arms bilaterally. He also presented to Dr. Paul M. Brisson in relation to this accident. He has not receive any physical therapy.

PRESENT COMPLAINTS;

At today's examination. Mr. Cohen reports having the same complaints of neck pain with radiating pain down the arms bilaterally.

PAST MEDICAL HISTORY;

The claimant reports that in 1994 he was in a motor vehicle accident and sustained a neck injury at that time. In 1952 he had a kidney surgery. He is currently taking pain medication.

Page 2 Re; Benny Cohen Date July 17, 2000

OCCUPATIONAL HISTORY AND CURRENT STATUS; At the time of this accident, the claimant reports that he was unemployed.

ORTHOPEDIC EXAMINATION

Physical Examination;
Age; 49, Height; 5' 8'. Weight; 140 lbs. Eyes; hazel. Hair; salt and pepper colored, left hand dominant mail.

On physical examination today, I found the claimant to be alert, cooperative and well oriented to person, place and time. His communication skills, recent and remote memory, insight and judgment, affect and mood are all within normal limits. He is able to follow commands and cooperate with the examination. My findings today are as follows; Cervical Spine;
Examination of the cervical spine reveals a normal lordosis. The cervical paraspinal region was palpated

using light touch and no paraspinal muscle spasm is noted. Cervical compression testing is negative. Range of motion of the cervical spine; flexion to 45 degrees (45 degrees normal). Extension to 45 degrees (45 degrees normal). Right rotation to 70 degrees (70 degrees normal). Left rotation to 70 degrees (70 degrees normal). Right lateral flexion to 45 degrees (45 degrees normal). And left flexion to 45 degrees (45 degrees normal).

Upper Extremities;

The claimant has full range of motion of both upper extremities. Muscle strength in the biceps, wrist flexors and extensors are all graded +5. The claimant easily place both hands above their head and behind their back without any difficulty or discomfort noted. Triceps, biceps and brachioradialis reflexes are present and active. Tinel sign and Phalen test were negative.

REVIEW OF MEDICAL RECORDS;

Submitted for my review was;

1. Narrative report from Dr. J. Margulies, dated on 5/20/00.
2. MRI of the cervical spine. Performed on 4/16/00.

DIAGNOSIS;

Resolved sprain of the cervical spine.
Normal examination of the upper extremities.

DISABILITY;

The claimant has no disability at this time. There will be no permanency as a result of this accident. He is capable of working and performing all of his normal activities of daily living without any limitations.

TREATMENT;

No future orthopedic intervention is indicated, and any such treatment would be considered excessive.

There is no need for additional physical therapy, diagnostic testing, medical supplies, household help or special transportation.

CAUSAL RELATIONSHIP;

Based on the information available, the history as related by the claimant and my physical examination. There is probable causality between the sustained and the accident reported.

I Joseph L. Paul. Being a Diplomate of the American Board of Orthopedic Surgeons. Am duly licensed to practice medicine in the State of New York pursuant to CPLR, section 210.6 and hereby affirm under penalty of perjury, that the foregoing is true and accurate to the best of my knowledge.

Very truly yours,

/s/ Joseph L. Paul.

JOSEPH L. PAUL M.D.

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APPENDIX K

June 12, 2000
RE; Mr. Benny Cohen
Chart # 915488

Mr. Cohen was involved 4/8/00 in a motor vehicle accident. This accident precipitated very acute aggressive cervical pain. He has since this accident worsened. His pain is so intense that he clearly shows to some degree, Some decompensation and I say so because he now use pain medication in high amounts, he smokes more, he is very distressed by the pain. He is describing total upper limb numbness. He has weakness in his left upper extremities.

Examination conducted today shows a patient in pain while he is examined. Range of motion of the neck is severely curtailed. He has on examination definite weakness in the left upper extremities, more so for the C6 and C7 motor root at 4 on 5. He has numbness over the C6 dematome. Reflexes are present. No narrowing at C5 –6. Flexion extension does not show any instability. MRI of the cervical spine is consistent with an isolated C5-6 condition.

IMPRESSION: Traumatic disc herniation C5-6.

RECOMMENDATION; Anterior discectomy fusion. The patient is a smoker.. Since we use allograft, I would consider a single level plating.

Paul M. Brisson, M.D. /s/ Paul M. Brisson

Cc; Jacob Nir, M.D.
164-A East (61th) Street
New York, NY 10021

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D'ANGELO, PEARL & SASSON
ORTHOPEDIC ASSOCIATES
942 FIFTH AVE.
NEW YORK, N.Y. 10021
TEL (212) 734 – 4504
FAX (212) 249 – 5463

PATIENT BENNY COHEN

9-14-00 DATE OF ADMISSION * THE HOSPITAL WILL CALL YOU THE DAY BEFORE TO TELL YOU WHAT TIME TO ARRIVE AT THE HOSPITAL.

9-14-00 DATE OF SURGERY - REPORT TO THE ADMITTING OFFICE

DATE OF MANDATORY PRE-SURGICAL TESTING AT THE HOSPITAL The hospital will call call you with this date

DATE OF PRE-SURGICAL TESTING WITH MEDICAL DOCTOR WHO IS ON STAFF AT THE HOSPITAL AND WILL CARE FOR YOU DURING YOUR HOSPITAL STAY, YOU WILL SEE HIM IN HIS OFFICE LOCATED AT -------

PLEASE CALL HIS OFFICE ----------
IF UNABLE TO KEEP THIS APPOINTMENT OR TO ARRANGE ANOTHER

YOUR SURGERY WILL BE PERFOMED AT;

Cabrini Medical Center
227 E 19 St

N.Y (2+3 Ave)
(212) 995- 6000

IF YOU ARE COVERED BY HMO SUCH AS, U.S. HEALTHCARE, OXFORD, AETNA, ETC., PLEASE BE SURE TO GET REQURIED REFERRAL FORMS WITH THE HOSPITAL NAME, AND THE PRE - TESTING. YOU SHOULD ALSO CALL YOUR INSURANCE COMPANY TO ASK WHETHER A SECOND OPINION IS REQUIRED .
Please call after surgery for POST – OPRATIVE APPOINTMENT IN OUR OFFICE.

YOU ARE RESPONSIBLE FOR ANY AMOUNT NOT COVERED BY THE INSURANCE UNLESS OTHER ARRANGEMENTS HAVE BEEN MADE PRIOR TO SURGERY.

PHYSICLOGIC ASSESSMENT SERVICES
214 Engle Street
Englewood, New Jersey 07631
201 567 8408 V
201 567 7551 F

Joseph Danto, Ph.D., CNIM Herman Hertzberg M.A.CNIM

August 22, 2000

Mr. Benny Cohen
1270 E. 18th St
Brooklyn, NY 11230

Dear Mr. Cohen,

Your surgeon, Dr. Paul Brisson, requested that Physiologic Assessment Services provide Neurophysiologic Intra-Operative Monitoring services during your surgeries on September 14, 2000 at Cabrini Medical Center.

Generally one hour prior to surgery, a member of our staff will place electrodes over nerves and/or muscles that are to be monitored during the surgical procedure. Their status are included in the surgeon's decision-making processes. The monitoring is concluded when you leave the operating room.

Please be aware that Physiologic Assessment Services is a non-participating provider and will not accept assignment. You will, therefore, be responsible for any balance remaining after insurance reimbursement. Also,

please be advised that Medicare will not reimburse us for these services, therefore you will be responsible for payment.

In order to expedite payment by your insurance carrier, we ask that you please do the following as soon as possible:

1. Sign and return the copy of this Letter of Consent, and the Assignment of Benefits.
2. Complete and return the enclosed Insurance Information Form.

A self-addressed envelope has been provided for your convenience. If you have any questions, please feel free to call our office. Best wishes for a speedy recovery.

Very truly yours,

/s/ Silvano Carcich

SC/JD
Enclosures

APPENDIX L

KINGS HIGHWAY ELECTRIC DIAGNOSTIC CENTER
3131 KINGS HIGHWAY
SUITES C9, 10, 11
BROOKLYN, N.Y 11234
(718) 253-9886
JACOB NIR, M.D. F.A.A.P.M. & R.
DIPLOMATE AMERICAN BOARD OF
PHYSICAL MEDICINE & REHABILITATION

8/14/02

TO WHOM IT MAY CONCERN;

Re; Benny Cohen
D/A; 4/12/00

The above named under my care. He remains symptomatic and continues to have severe pain on the cervical region which radiates to the upper extremities.

MRI of the cervical spine is positive for herniated disc at multiple levels. The patient was scheduled for surgery by Drs. Murali and Brisson - which to date has not been done.

There is no improvement in patient's condition and there is evidence of deterioration of muscle strength and increased nerve root compression.

Very truly yours,

/s/ Jacob Nir,
Jacob Nir M.D.

SPORT MEDICINE AND PAIN MANAGEMENT
3131 KINGS HIGHWAY
SUITES C9, 10, 11
BROOKLYN, N. Y. 11234
TEL; (718) 253-9886

JACOB NIR, M.D. F.A.A.P.M. & R.
DIPLOMATE AMERICAN BOARD OF
PHYSICAL MEDICINE & REHABILITATION

10/9/03

TO WHOM IN MAY CONCERN;

Re; Benny Cohen
The patient is under my care for cervical disc herniations at multiple levels with severe nerve root compression.
The patient has been evaluated by Dr. Brisson and Dr. Muralis who recommend Cervical Decompression Laminectomy and Fusion.

Mr. Cohen also is under the care of Dr. Sherwood Jacobson, Neurosurgeon, at St, Vincent's Hospital, for follow-up care and is prescribed strong pain medication - Oxycantane and Vicodin, by Dr. Jacobson.

The patient is in a pain management program with minimal response.
Mr. Cohen is totally disabled. The prognosis is poor.

/s/ Jacob Nir
Jacob Nir M. D.

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SPORT MEDICINE AND PAIN MANAGEMENT
3132 KINGS HIGHWAY
SUITES C9, 10, 11
BROOKLYN, N. Y. 11234
TEL; (718) 253-9886

JACOB NIR, M.D. F.A.A.P.M. & R.
DIPLOMATE AMERICAN BOARD OF
PHYSICAL MEDICINE & REHABILITATION

10/26/04

TO WHOM IT MAY CONCERN;

Re; Benny Cohen
The above named is under my care for severe cervical radiculopathy. The patient continues to have complaints of neck pain which radiates to the upper extremities. He has numbness, tingling and weakness of the upper extremities.
PHYSICAL EXAMINATION;
The patient is treated with injection of zylocaine and TENS UNIT ELECTRICAL STIMULATION.
The patient also has been prescribed anti-inflammatory medication and muscle relaxant to decrease spasms on muscles on shoulder region.
EMG & NCS of the upper extremities are positive for cervical radiculopathy with nerve root involvement.

There is deterioration of the patient's condition because surgery has not been performed on the cervical spine.

Mr. Cohen remains under my care for follow-up medical treatments.

/s/ Jacob Nir
Jacob Nir M.D.

APPENDIX M

MANHATTAN NEUROSURGICAL ASSOCIATES, P.C.

Raj Murali, M.D. FA. C. S.
Ashok Anant, M.D. FA.C.S
Alan D. hirschfeld, M.D.
Ahmed A. Rawanduzy, M.D.
Richard L. Rovit, M.D. M.sc. FA.C.S.

Saint Vincents Hospital and Medical Center, 153 west 11TH Street NRB09
New York, NY 10011
(212)604-7767
FOX(212)604-3206

September 18, 2000

Jacob Nir, M.D.
164 East 61TH Street
New York, New York 10021

RE; BENNY COHEN
1270 East 18TH Street
Brooklyn, New York 11230

DOB; 07- 03- 51
SS#; 113-62-5466

Dear Dr. Nir;

Thank you for referring this patient, who was seen for neurosurgical consultation on September 18, 2000. The patient is a 49-year-old, retired construction worker with the following history:

In 1994, he had a car accident and following this, he developed neck pain, shoulder pain, and could no longer work. In April 2000, he had another car accident in which he sustained a whiplash injury, which made his symptoms much worse. Following the April car accident he has been in constant neck pain, with limitation of neck movements, muscle spasms, bilateral upper limb weakness, some

numbness of the fingertips, and generally has been miserable. He has been on Vicodin three to four tablets a day for the past six years. He is a heavy smoker and gives a 50 to 60 pack year history of smoking. He does not drink alcohol. He is married and has two healthy children. There is history of allergy to penicillin. There is no other significant past medical history, except for some kind of abdominal operation as a child.

On examination, he was thinly built. Neck movements were limited in all directions, especially forward flexion. There was evidence of paracervical muscle spasm. There was a certain amount of diffuse weakness of both upper limbs, probably related to pain. Sensations were normal. Deep tendon reflexes were present normally at biceps, decreased at the brachioradialis, and absent at both triceps.

Radiological Interpretation: I reviewed an MRI scan of the cervical spine obtained in April 2000. Unfortunately, the axial images are not labeled in the scans that he brought. The scan does indeed show the presence of degenerative disc disease with osteophyte formation and spondylotic changes at C4-5, C5-6, and C6-7 levels, but the pathology is mostly at C5-6. There is also disc space narrowing at this level. The patient also has plain x-rays of the cervical spine, which shows a very narrow disc space at C5-6 with osteophyte formation and a certain amount of abnormal mobility at C4-5.

In summary, the patient has chronic neck pain, bilateral shoulder pain, and upper limb weakness. The symptoms have been present for six years. He

is also a very heavy smoker. I have asked him to find the missing x-ray and come back for a further appointment to discuss the pros and cons of surgical treatment, namely anterior cervical decompression and fusion.

Once again, many thanks for referring this patient to me.

Sincerely yours

/s/ Raj Murali
Raj Murali, M.D.
Professor and Chairman,
Department of Neurosurgery

RM/DF DD; 09-18-00 DT; 09-23-00

MANHATTAN NEUROSURGICAL ASSOCIATES, P.C.

Raj Murali, M.D. FA. C. S.
Ashok Anant, M.D. FA.C.S
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Saint Vincents Hospital and Medical Center, 153 west 11TH Street NRB09
New York, NY 10011
(212)604-7767
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November 1, 2000

Jacob Nir, M.D.
164 East 61TH Street
New York, New York 10021

RE; BENNY COHEN
1271 East 18TH Street
Brooklyn, New York 11230

DOB; 07-03-51
SS#; 113-62-5466

Dear Dr. Nir;

I saw Mr. Cohen again for follow-up on November 1, 2000. He continues with the same symptoms as before, namely neck pain, shoulder pain, numbness and weakness of both upper limbs, as well as muscle spasms.

Radiological Interpretation: Review of MRI (10-23-00) again shows the presence of herniated discs at C4-5 and C5-6 levels.

As the patient clearly states that his symptoms started after a car accident in April 2000, he is having the case reopened by No Fault. Once the insurance issues are

sorted out, I shall arrange for anterior cervical decompression and fusion at C4-5 and C5-6 levels.

Sincerely yours,

/s/ Raj Murali
Raj Murali, M.D.
Professor and Chairman,
Department of Neurosurgery

RM/DF DD; 11-01-00 DT; 11-06-00

MANHATTAN NEUROSURGICAL ASSOCIATES, P.C.

Raj Murali, M.D. FA. C. S.
Ashok Anant, M.D. FA.C.S
Alan D. hirschfeld, M.D.
Ahmed A. Rawanduzy, M.D.
Richard L. Rovit, M.D. M.sc. FA.C.S.

Saint Vincents Hospital and Medical Center, 153 west 11TH Street NRB09
New York, NY 10011
(212)604-7767
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October 4, 2000

Jacob Nir, M.D.
164 East 61TH Street
New York, New York 10021

RE; BENNY COHEN
1272 East 18TH Street
Brooklyn, New York 11230

DOB; 07- 03- 51
SS#; 113-62-5466

Dear Dr. Nir;

I saw Mr. Cohen again for follow-up on October 4, 2000. He tells me that his symptoms are much worse and that he is not able to live like this anymore.

I again reviewed the x-rays of the spine and MRI scans, and I recommend that he have an anterior cervical decompression and fusion at C4-5 and C5-6 levels.

Review of history clearly indicates that his problems started with the car accident in April 2000. It is therefore obvious that there are legal issues here, and I

have therefore asked him to contact his attorney regarding all this before proceeding with surgical treatment. He will let me know his decision.

Sincerely yours,

/s/ Raj Murali
Raj Murali, M.D.
Professor and Chairman,
Department of Neurosurgery

RM/DF DD; 10-04-00 DT; 10-13-00

APPENDIX N

RICHARD J. RADNA, M.D. , - NEUROSURGERY

OFFICE ADDRESSES;

1165 PARK AVENUE
NEW YORK, N.Y

1915-25 CENTRAL
PARK AVENUE
YONKERS, N. Y .

MAILLING ADDRESS; 1165 PARK AVENUE
NEW YORK. N . Y . 10128-1210

(212) 427 – 7500, 1 , 2 , 3
(212) 427 - 7504 (FAX)
(914) 793 – 8634

April, 14, 2004

Dr. Jacob Nir
164 East 61 Street
NY , NY 10021

Re; Cohen , Benny

Dear Dr. Nir ; ·

I had the opportunity to see in the office, as of this date, your patient, Mr. Benny Cohen, who is a 52 - year old, left- handed, disabled painter and computer web designer, who reports being in his usual state of health until 2000-04-12, at which juncture he was involved in a motor vehicular accident, with injuries to the cervical and lumbo-sacral regions.

At the time of the accident, Mr. Cohen was driving his vehicle, belted. He reports a flexion-extension to his head, neck and thoraco-lumbar spine, with impact to his head, neck and shoulders,

and the onset of cervical and lumbo-sacral pain. His predominant complaint has been cervical. There is associated cephalalgia. He reports. At the time of the accident, impact to the left side of his head, with the onset of cephalalgia, redominantly left-sided, occurring several times a week and persistent.

Lumbo-sacral pain has been bilateral, with radiation down the left lower extremity, to all toes of the left foot.

Predominant complaint has remained cervical pain, which has been bilateral, with radiation to bilateral upper extremities, involving all five fingers of the right hand. He has been managed non-operatively under your benevolent care, with persistent complaints.

Past history is significant for a motor vehicular accident in 1994 which led to stable cervical condition severely exacerbated by the accident of 2003-06-08.

On physical examination, there is evidence of severe bilateral paravertebral spasm in the cervical and lumbo-sacral regions, with severely diminished range of motion. Spurling maneuver elicits discomfort at the base of the neck. Patrick and straight leg raising are severely restricted bilaterally.

On neurological examination, there is an antalgic gait, with attenuated dorsi – and plantar flexion of both feet. There are no myelopathic findings. There is attenuated dorsi – flexion, bilaterally.

MRI of the cervical spine shows a discogenic and osseous cervical stenosis with neural impingement and multi-level foraminal stenosis.

Impression is that of a causally – related cervical and lumbo-sacral, musculo-skeletal and radicular pain syndromes.

The level of causally – related disability is total. In light of the chronicity of the patient's symptoms, they have permanency.

In terms of further management, I recommend decompressive cervical micro-laminotomy and medial facetectomy.

Mr. Cohen is considering the operative recommendation. In the interim, he is referred back to you for further non-operative care.

In terms of further management, physical therapy to the cervical and lumbo-sacral regions is recommended.

Vioxx is prescribed. Skelaxin is prescribed.

I will provide follow-up data as they become available.

With best wishes, and many thanks for allowing me to participate with you in the care of this patient.

Sincerely, RICHARD J. RADNA, M.D., Ph, D., F. A. C. S

/s/ RICHARD J. RADNA

RJR/ rl

Opposition Brief Unavailable for Filming at this Time

05-385

NOV 2 - 2005

No._____

IN THE

SUPREME COURT OF THE UNITED STATES

Benny Cohen,

Petitioner(s)

vs.

Allstate Insurance Company,

Respondent(s)

On Petition For A Writ of Certiorari to

The State of New York Court of Appeals

REPLY TO BRIEF IN OPPOSITION

Benny Cohen
1270 East 18 Street Apt 6H
Brooklyn New York 11230
(718) 258 - 1744

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QUESTION PRESENTED

Plaintiff sought Federal Court resolution of a novel question on the narrower grounds in this case to determine for the first time the extent to which the Constitutional protections for actual injury that can fairly be traced to the challenged action of defendant , whether petitioner's allegations failed to satisfy the redressability requirement for Article III standing.

REPLY TO BRIEF IN OPPOSITION

1.

The defendant in there Opposition to Petition for writ of Certiorari, Page 5 Stated: " The Petition for Writ of Certiorari herein appended copies of doctor reports and other documentation which for the most part were not made part of his complaint -or his opposition to the motion submitted in response to Allstate's motion to dismiss the complaint in the lower court (Pet. App. 10-28, 35-53). Accordingly, these documents are of no relevance to the within application for Writ of Certiorari and should be disregarded by this Court. "

2.

The above defendant's allegatio is incorrect in part because for Example (App. 35 36) is Doctor Brisson's report who recommended plaintiff for surgery and was in conflict to Their Doctor Paul's report. Based on (App. 35 36) plaintiff put the original complaint in the lower Court. Further more, in some point most of this Doctor reports was revealed to the Court or to the defendant in (Response For Requested Discovery) plaintiff believe that all Apendix should come in because it shows and reveals plaintiff's case. In (App.10 28) defendant reveals their neglect and shows evidence supporting plaintiff's whole case. Other Appendices show plaintiff's condition and Deterioration, which for the most part is what this case is all about.

3.

In there Opposition TABLE OF CONTENTS I, II, III, the defendant claims that " This Court Lacks Jurisdiction As Invoked By The Petitioner Under 28 U.S.C. § 12 57(a) "

"the constitutional requisites under Article III for the existence of standing are that the party seeking to sue must personally have suffered some actual or threatened injury that can fairly be traced to the challenged action of defendant and that the injury is likely to be redressed by a favorable decision."

4.

In answering defendant;

"RESONE FOR DENYING THE PETITION."

Valley Forge Christian College v. Americans United for Separation of Church and State, Inc. No. 80-327

"The exercise of judicial power, which can so profoundly affect the lives, liberty, and property of those to whom it extends, is therefore restricted to litigants who can show "injury in fact" resulting from the action which they seek to have the court adjudicate."

"A recent line of decisions, however, has resolved that ambiguity, at least to the following extent: at an irreducible minimum, Art. III requires the party who invokes the court's authority to "show that he personally has suffered some actual or threatened injury as a result of putatively illegal conduct of the defendant," Gladstone, Realtors v. Village of Bellwood, 441 U.S. 91, 99 (1979), and that the injury "fairly can be traced to the challenged action" and "is likely to be redressed by a favorable decision," Simon v. Eastern Kentucky Welfare Rights Org., 426 U.S. 26, 38, 41 (1976).[fn9] In this manner does Art. III limit the federal judicial power."

The defendant claim that plaintiff have no standing, because there are no important federal question that conflicts with relevant decision of this Court. The following law is from Article III

decisions,[325] and is almost exclusively concerned with such public law questions as determinations of constitutionality and review of administrative or other governmental action.[326] As such, it is often interpreted according to the prevailing philosophies of judicial activism and restraint and narrowly or broadly in terms of the viewed desirability of access to the courts by persons seeking to challenge legislation or other governmental action. The trend in the 1960s was to broaden access; in the 1970s, 1980s, and 1990s, it was to stiffen the requirements of standing, although Court majorities were notentirely consistent. The major difficulty in setting forth the standards is that the Court's generalizations and the results it achieves are often at variance.[327]

325. E.g., Valley Forge Christian College v. Americans United, 454 U.S. 464, 471-476 (1982); Allen v. Wright, 468 U.S. 737, 750-751 (1984).

326. C. Wright, Handbook of the Law of Federal Courts (St.Paul: 4th ed. 1983), 60.

327. ``[T]he concept of `Art. III standing' has not been defined with complete consistency in all of the various cases decided by this Court . . . [and] this very fact is probably proof that the concept cannot be reduced to a one-sentence or one-paragraph definition." Valley Forge Christian College v. Americans United, 454 U.S. 464, 475 (1982). ``Generalizations about standing to sue are largely worthless as such." Assn. of Data Processing Service Org. v. Camp, 397 U.S. 150, 151 (1970). For extensive consideration of the doctrine, see Hart & Wechsler, op. cit., n.250, 107-196.

CONCLUSION

The petition for a writ should be granted.

Respectfully submitted,

Benny Cohen /s/ Benny Cohen

Date; October 31, 2005

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05-385

FILED
DEC - 9 2005
OFFICE OF THE CLERK
SUPREME COURT, U.S.

IN THE

SUPREME COURT OF THE UNITED STATES

Benny Cohen,

Petitioner(s)

vs.

Allstate Insurance Company,

Respondent(s)

On Petition For A Writ of Certiorari to

The State of New York Court of Appeals

PETITION FOR REHEARING

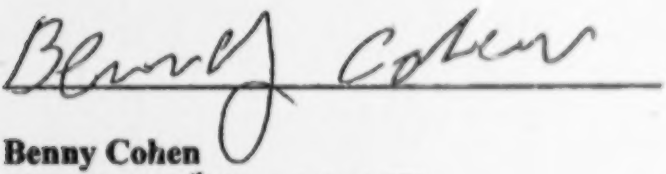
Benny Cohen
1270 East 18 Street Apt 6H
Brooklyn New York 11230
(718) 258 - 1744

Rule 44

Benny Cohen certifies that the petition for re-hearing is limited to substational grounds that previously represented and is restricted to the grounds specified in supreme court rule forty-four and is presented in good faith and not for delay.

Dated; Brooklyn, New York
December 5, 2005

Respectfully submitted,



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CASES;

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BEVERLY SOMMER, ET AL.,RESPONDENTS-APPELLANTS, v. FEDERAL SIGNAL CORPORATION, ET AL., RESPONDENTS-
79 N.Y.2d 540, 593 N.E.2d 1365, 583 N.Y.S.2d 957 (1992).

3 No. 50
In the Matter of william C. Brandon
Nationwide Mutual Insurance Company, Appellant.

http://caselaw.lp.findlaw.com/data/constitution/article03/10.html

Clark-Fitzpatrick Inc. v. Long Island Railroad Company, 70 N.Y.2d 382, 521 N.Y.S.2d 653, 516 N.E.2d 190 (1987)

Gladstone, Realtors v. Village of Bellwood, 441 U.S. 91, 99 (1979),

," Simon v. Eastern Kentucky Welfare Rights Org., 426 U.S. 26, 38, 41 (1976)

U.S Court of Appeals for the Ninth Circuit
Case name; Bras v. California Public Utilities Commission
Case Number 93-15764 Date File 07/05/95

Petition for Rehearing,

1. The Supreme Court of the State of New York Appellate Division; Second Judicial Department based their decision on CPLR 3211(A)7; and CPLR 3013; Clark- Fitzpatrick Inc. v. Long Island Railroad Company, 70 N.Y.2d; Dimauro v. Metropolitan Suburban Bus Auth, 105 AD2d 236, 239). The Court dismiss the complaint on the law, and that there was no causal nexus between any such negligence and the plaintiff's claimed injuries. Plaintiff did show causal nexus and in the Following argument will show to this Court the requirements necessary for Jurisdiction, and connection for Federal intervention.

2. Valley Forge Christian College v. Americans United for Separation of Church and State, Inc. No 80.327

Hon. Justice Rehnquist delivered the opinion of the Court; Stated that in this manner does Art. III limits the Federal Judicial power and explaining the Court's view on important Constitution facts (a) injury in fact (b) show that he personally has suffered some actual or threatened injury as a result of putatively illegal conduct of the defendant (c) fairly can be traced to the challenged action (d) is likely to be redressed by a favorable decision.... The plaintiff in his past and present arguments did and will show this Court that the above opinion written by Hon. Justice Rehnquist, does applies to plaintiff case. Hon. Justice Rehnquist, did not mention in his Court's opinion the view that these requirements must be applied only to Federal issues. Therefore logically it must to applied to both Federal and State Courts. Hon. Justice Rehnquist also brings two cases to support the opinion of the Court. Gladstone, Realtors v. Village of Bellwood, 441 U.S. 91, 99 (1979), Simon v. Eastern Kentucky Welfare Rights Org., 426 U.S. 26, 38, 41 (1976)

3. BEVERLY SOMMER, ET AL., RESPONDENTS-APPELLANTS, v. FEDERAL SIGNAL CORPORATION, ET AL., RESPONDENTS-
79 N.Y.2d 540, 593 N.E.2d 1365, 583 N.Y.S.2d 957 (1992).

In this case the Court said that **"In disentangling tort and contract claims, we have also consider the nature of the injury, the manner in which the injury occurred and the resulting harm".**(See plaintiff petition for writ certiorari Pages 11-12). What the Court stated above was in conflict with the same State Court deciding plaintiff' case.

And in **William C. Brandon.** The above case the New York Court of Appeal stated that a tort may arise from a breach of a legal duty independent of a contract. The Court stated. "may be subject to tort liability for failure to exercise reasonable care" .The Court gave an example stating "We rejected plaintiff's attempt to ground in tort a claim that defendants supplied defective floor tiles, noting that the injury (delamination of tiles) was not personal injury or property damage; there was no abrupt cataclysmic occurrence; and the harm was simply replacement cost of the product". In plaintiff's case there is a tort arising from a contract because there is no "defective floor tiles" and the harm is **personal injury** and by the defendant's lack of investigation and termination of plaintiff's medical benefits, plaintiff was refused an operation which caused his condition to become worse and has disabled him totally, therefore the Court which dismissed plaintiff 's case citing (id.; Clark- Fitzpatrick, 70 NY2d at 389-390, supra),is in conflict to the above statement. (See plaintiff petition for writ certiorari Pages 11-12)

4. 3 No. 50 In the Matter of William C. Brandon Respondent, Nationwide Mutual Insurance Company, Appellant.

In the above case the State of New York Supreme Court of Appeals, in their Footnotes said the following.

"Nationwide's procedures for handling no-fault and SUM claims doubtless differ, and we do not say that notice of one kind of claim can substitute for the other. Nevertheless, the least that can be said on this record is that neither Nationwide's treatment of the no-fault claim nor its treatment of the SUM claim suggests that Nationwide took any active interest in investigating, settling or setting reserves for petitioner's claim. The emphasis in both cases was solely on determining whether late notice might relieve Nationwide of its coverage obligations." And was in conflict to plaintiff case by not taking any active interest in investigating, plaintiff's Doctor recommendation for surgery.

5. http://caselaw.lp.findlaw.com/data/constitution/article03/10.html

Cases and Codes : U.S. Constitution : Article III .

In this web site Constitution cases and codes brings plaintiff's argument and requirement in full . In summary, the U.S Supreme Court does not have a clear criteria fo, standing "and the results it achieves are often at variance [327]

6. (a) Defendant was Negligent in bad-faith denying plaintiff medical claims. (b) Defendant's own admission in Third Party Summons (See App. 10 – 28). (c) Hon. Judge Lewis L. Douglass two times denieddefendant's motion to dismiss. (d) plaintiff is given standing to assert his claims and his interest is legally protected by the Constitution of the United State of

America Article III. Judicial Department. (e) In examination before trial defendant admits to the fact that they did receive Dr. Brisson's letter that recommended surgery, and to the fact that the Hospital made phone call asking if benefits were available to perform the surgery. (f) Hon. Justice Rehnquist delivered the opinion of the Court regarding Art. III. Hon. Justice Rehnquist's opinion is relevant to plaintiff's arguments

7. The plaintiff did suffer actual injury that can fairly be traced to the challenged action of defendant. As results of illegal conduct of the defendant, the defendant is required by law to make sure and investigate before issuing denial. Not only the defendant did not investigate, the defendant knew from Doctor Brisson (App. 35-36) the plaintiff's condition and the fact that the plaintiff needed surgery. On the day of surgery, the hospital called the defendant for verification of payment for surgery which the defendant disproved, (See App.37-38),. Until the day of surgery, the defendant did not notify plaintiff that they denied him medical services.

8. In examination before trial plaintiff ask Q.. "let me here from you saying clear that you didn't know that I scheduled for a surgery, that's what you saying?" A. "In this No-Fault file there is nothing about surgery being scheduled . In the notes that we got from Dr. Brisson after the IME from Dr. Paul it says recommend surgery.It does not state that it was scheduled. In your discovery you show something with regards to Cabrini Medical Hospital, the pre admission that you were discussing. It's not in this No-Fault file. No one knew that you were scheduled for surgery except for possibly a phone call that Cabrini made to Allstate. They spoke to someone , I don't know who, asking if your benefits were available."

9. This is one more proof to show that the defendant knew plaintiff condition, and was obligated to make sure and investigate before issuing denial of benefits. And it does support the Constitution Article III. Judicial Department, "Actual or threatened injury that can fairly be traced to the challenged action of defendant And that the injury is likely to be redressed by a favorable decision".

U.S Court of Appeals for the Ninth Circuit
Case name; Bras v. California Public Utilities Commission
Case Number 93-15764 Date File 07/05/95

IV. "The likelihood of future injury in the instant case is far too remote to meet established constitutional standards. Standing is founded "in concern about the proper--and properly limit-ed--role of the courts in a democratic society. " Warth, 422 U.S. at 498. When an individual seeks to avail himself of the federal courts to determine the validity of a legislative action, he must show that he "is immediately in danger of sustaining a direct injury." Ex parte Levitt, 302 U.S. 633, 634 (1937). This requirement is necessary to ensure that "federal courts reserve their judicial power for concrete legal issues, pres-ented in actua l cases, not abstractions.' "Associated General Contractors of California v. Coalition for Economic Equity,950 F.2d 1401, 1406 (9th Cir. 1991) (quoting United Public Workers, 330 U.S. at 89), cert. denied, 112 S. Ct.1670(1992). Bras offers us a hypothetical injury, abstract in nature. We should not exceed our judicialauthority by holding that he has standing".
7736

10. In the above case the Court say that plaintiff must show that he "is immediately in danger of sustaining a direct injury." Which the plaintiff show. Plaintiff's is on pain medication that are very dangers, and the fact that plaintiff's condition is deteriorated and still deteriorating, Plaintiff show requirement to allow Federal intervene and requirement necessary Jurisdiction to be applied to this case. Respectfully.